

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4306 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

SALIMKHAN @ ALTAFKHAN

SHAHEJADKHAN PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

Mr.SJ DAVE, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 19/08/97

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu has brought under challenge the detention order dated 5th May 1997 rendered by respondent No.1 u/s.3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (Act No.16

of 1985), for short "the PASA Act".

2. The grounds on which the impugned order of detention has been passed appear at Annexure : B to the petition. They inter alia indicate that the petitioner has been indulging in criminal and anti-social activities of assaulting innocent persons and causing hurt to them which resulted into creating atmosphere of fear in the mind of the people. The Detaining Authority has placed reliance upon three offences, one offence of 1992 and two offences of 1997, inter-alia, under Section 147, 148, 149, 294, 332, 336, 324, of I.P.C. read with Section 135(1) of the Bombay Police Act registered in Gaikwad Haveli Police Station, Ahmedabad. The particulars of such offences have been set out in the grounds of detention.

The petitioner has been enlarged on bail for all the aforesaid offences.

3. It has been recited that the detenu's anti-social activity tends to obstruct maintenance of public order and in support of such conclusion statements of eight witnesses have been relied upon. They speak about the incidents dated 1.4.1997, 10.4.1997, 16.4.1997 and 24.4.1997 indicating threatening the concerned witnesses and creating atmosphere of fear amongst the people collected at the time of such incidents.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner. The petitioner has been branded as a dangerous person within the meaning of section 2(c) of the PASA Act.

5. I have heard the learned Advocate for the petitioner and the learned A.G.P. for the State. I have gone through the papers of the file referred to on behalf of both sides. The petitioner has challenged the aforesaid order of detention on number of grounds inter-alia on the ground that there is no material to indicate that the detenu's conduct would show that he is habitually engaged in the anti-social activities which can be said to be prejudicial to the maintenance of public order. This is a case of individual incidents affecting law and order and in the facts of the case would not amount to leading to conclusion that the same would affect public order. Reliance has been placed on the following decision of the Apex Court :-

Mustakmiya Jabbarmiya Shaikh V/s. M.M.Mehta,
C.P. reported in 1995 (2) G.L.R. 1268, where
the incidents were quoted in paras : 11 and 12
of the citation and it has been submitted that
facts of the present case run almost parallel to
the facts before the Apex Court in Mustakmiya's
case (supra).

6. In reply Mr.S.J. Dave, learned A.G.P. for the
State has relied upon a decision in the case of Mrs.
Harpreet Kaur Harvinder Singh Bedi V/s. State of
Maharashtra and anr., reported in AIR 1992 SC 979.
Comparing the facts of the present case with the facts in
the case before the Supreme Court, it clearly appears
that the decision in Mrs.Harpreet Kaur's case (Supra)
would not be applicable.

7. There are other grounds of challenge levelled
against the impugned order of detention. However, in
view of the fact that the petitioner would succeed on the
strength of decision of Mustakmiya's case (supra), it is
not necessary to deal with the other grounds. Following
order is, therefore, passed :

The impugned order of detention is hereby quashed
and set aside. The petitioner-detenu - Salimkhan
Altafkhan Shahejadjkhan Pathan shall be forthwith set at
liberty if he is not required to be detained in any other
case. Rule made absolute accordingly.

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